IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7805 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMANBHAI KHIMABHAI RATHOD

Versus

SK PATEL,

Appearance:

MR ANIL S DAVE for Petitioner

MR RC KODEKAR AGP for Respondents No. 1, 2 and 4

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 01/09/2000

ORAL JUDGEMENT

1. The order of detention dated June 9, 2000 passed by the District Magistrate, Bhavnagar in exercise of powers conferred on him by sub-section-2 of section-3 of

the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("the Act" for short) against the petitioner, is subject matter of challenge in the present petition which is filed under Article-226 of the Constitution.

2. The grounds of detention supplied to the detenu indicate that the detenu was dealing in essential articles like wheat, rice, kerosene, sugar, etc., and having regard to the materials placed before him, the detaining authority was satisfied that it was necessary to detain the detenu with a view to preventing him from acting in any manner prejudicial to the maintenance of supply of commodity essential to the community. Therefore, an order was made by the detaining authority on June 9, 2000 directing to detain the petitioner.

3. Heard the learned counsel for the parties.

4. Several contentions have been urged by the learned counsel for the petitioner while assailing the validity of the order of detention. However, it is not necessary to refer to all of them except one, which in my opinion, merits acceptance.

5. The learned counsel for the petitioner submitted that on behalf of the detenu, his Advocate had forwarded a representation dated July 3, 2000 to the detaining authority with a request to him to forward the same for consideration of the State Government, but, instead of forwarding the same to the State Government, the detaining authority rejected the same on July 10, 2000 which is illegal as order of detention was approved by the State Government on June 20, 2000. According to the learned counsel, the detenu has fundamental right guaranteed under the Article-22(5) of the Constitution to make representation to the State Government and as the said right is infringed by the detaining authority, the continued detention of the petitioner should be held to be illegal. This ground of challenge is raised in paragraph-19(A) of the petition.

6. The detaining authority i.e. Mr. K.A. Patel, District Magistrate, Bhavnagar, has filed Reply-Affidavit. In Affidavit-in-reply, it is admitted that the representation dated July 3, 2000 was considered and rejected by him on July 10, 2000. The contents of the Affidavit-in-reply filed by the detaining authority do not show that he had forwarded representation of the petitioner to the State Government for its consideration. The Supreme Court in Navalshanker I. Dave Vs State of

Gujarat and Otrs. reported in AIR 1994 SC 1496 has ruled that once an order of detention is approved by the State Government, the detaining authority has no power to revoke the order of detention and power to revoke the detention order is available only to the State Government. In view of the authoritative pronouncement of law by the Supreme Court, the detaining authority should not have considered the representation dated July 3, 2000 made by the petitioner as order of detention was already approved by the State Government on June 20, 2000, but should have forwarded the same to the State Government for its consideration. Thus, there is no manner of doubt that right guaranteed to the petitioner under Article-22(5) of the Constitution that his representation should be considered by the State Government is infringed because of failure on the part of the detaining authority to forward the representation to the State Government for its consideration. The continued detention of the petitioner has, therefore, become illegal.

7. For the foregoing reasons, the petition succeeds. The continued detention of the detenu is held to be illegal. The respondents are directed to release the detenu immediately unless his presence is needed with reference to any other case. Rule is made absolute accordingly with no order as to costs.

(J. M. Panchal, J.)

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